UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/739,731	12/18/2000	John Zaharychuk	3239P089	5077

8791 7590 06/14/2005		EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN		BLOUNT, STEVEN	
12400 WILSHIRE BOULEVARD			
SEVENTH FLOOR		ART UNIT	PAPER NUMBER
LOS ANGELES, CA 90025-1030		2661	

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

Office Action Summary	Application No.	Applicant(s)
	09/739,731	ZAHARYCHUK ET AL.
	Examiner	Art Unit
	Steven Blount	2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>2/7/2005</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *See Continuation Sheet* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *See Continuation Sheet* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

Continuation of Disposition of Claims: Claims pending in the application are 1 - 3, 8 - 10, 11 - 13, 18 - 19, 20 - 22, 27 - 28, 29 - 34, 35 - 40, 41 - 47, and 48 - 49.

Continuation of Disposition of Claims: Claims rejected are 1 - 3, 8 - 10, 11 - 13, 18 - 19, 20 - 22, 27 - 28, 29 - 34, 35 - 40, 41 - 47, and 48 - 49..

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

2.   Claims 1, 9 – 13, 19 – 22, 28, 29, 30, 33 – 35, 37 – 38, 40 – 41, 43 – 44, and 46 -

49 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent

6,141,686 to Jackowski et al in view of U.S. patent 6,708,187 to Shanumgam et al.

With regard to claim 1, Jackowski et al teaches an access device comprising:

1) an analyzer – edge device 14: see col 2, line 60 (it "examine(s) packets and

appl(ies) policy rules to determine which packets to accelerate and which to delay")

2) an optimizer – policy server 18, which "sends the policy rules to edge device

13" (col 2, line 65. With regard to the optimizer generating optimized system parameters

in response to changing mixtures of different data types, see col 3 lines 3+.

The interaction between the analyzer and the optimizer to dynamically respond to

changing mixtures of different traffic types is taught in column 2, lines 65+:

"Policy server 18 sends the policy rules to edge device 14. Bandwidth information

is sent back from edge device 14 to policy server 18. This bandwidth information might

indicate the current bandwidth available to internet 20 or local network 15, or other load

statistics such as the kinds of packet appearing. The bandwidth information may be

used by policy server 18 to re-prioritize packets passing through edge device 14 by

adjusting the policy rules sent to edge device 14. For example, when edge device 14

detects video conferencing packets passing through, policy server 18 can reduce the

bandwidth allocated to other kinds of packets to reserve additional network bandwidth

for videoconferencing packets."

Jackowski et al does not, however, explicitly teach the access device to comprise

a CPU and memory, or an optimizing database that includes optimized system

parameters for different mixtures of data traffic types to achieve a desired goal.

Shanumgam et al teach in col 16 lines 53+ a policy enforcer that includes a

statistics module 512 that logs statistics on the packets and maintains a cache in a state

table for each connection. In col 17, lines 3+, it is stated that this information is

forwarded to policy server 122, wherein it is stated in col 7 lines 63+ that this information

is used to set bandwidth and administrator policies. Shanmgam et al also teach a cpu

(fig 3, member 302) and memory (fig 3, member 318). Note that Shanumgam also

teaches optimizier 122 may be used to set bandwidth and administration policies,

wherein the memory allocation, and message size are related to the bandwidth

allocation, and scheduling priority is related to an administration policy.

It would have been obvious to one of ordinary skill in the art at the time of the

invention to have provided Jackowski et al with a cpu/memory and a optimizing databse

with optimized system parameters, in light of the teachings of Shanumgam et al, in

order to provide a method for processing network data in an optimized fashion.

With regard to the following claims (hereinafter referred to as "Cl", see the

following: Cl 9: TCP is mentioned in col 6 line 60; Cl 10: in col 2, lines 59+, it is stated

that "Edge device 14 is able to block or delay packets to and from Internet 20"; in

addition to being able to filter messages which occur in a simplex manner, it is noted

that having more than one analyzer to perform this function (as having it done in one

unit, as in Jackowski et al) is an obvious variation;

With regard to claims 11 – 13 and 19, see the rejections above.

      With regard to claims 20 – 22 and 28, see the rejections above, and note that

processes such as those described in Jackowski/Shanumgam et al (including the

storage of policy statements in Jackowski) are typically implemented in software. With

regard to claim 29, see the rejection of claim 1. With regard to claim 30, see the

rejection of claim 2. With regard to claims 33 – 35, 37 – 38, and 40, see the rejections

above. With regard to claims 41, 43 – 44, and 46 – 49, note the rejections above, and

the fact that it would be obvious to implement the invention of Jackowski et

al/Shanumgam et al in software in order to permit the operation to be repeatable.

3.   Claims 2 – 3 and 31 – 32 are rejected under 35 U.S.C. 103(a) as being

unpatentable over U.S. patent 6,141,686 to Jackowski et al in view of U.S. patent

6,708,187 to Shanumgam et al as applied above, and further in view of U.S. patent

5,627,819 to Dev et al.

      With regard to claim 2, Jackowski et al/Shanumgam et al teach the invention as

described above, but do not teach the use of data taps. These are taught in Dev et al. It

would have been obvious to one of ordinary skill in the art at the time of the invention to

have used data taps to acquire information about the data types in

Jackowski/Shanumgam et al, in light of the teachings of Dev et al, in order to provide an

efficient means of data acquisition for the analyzer.

With regard to claim 3, the analyzer (edge device 14) must have a processing

unit so that it can operate as described in col 2 lines 60+ of Jackowski et al.

With regard to claims 31 – 32, see the discussion of claims 2 – 3.

4.   Claims 8, 18, 27, 36, 39, 42, and 45 are objected to as being dependent upon a

rejected base claim, but would be allowable if rewritten in independent form to include

the limitations of the base claims and any intervening claims.

Conclusion

5.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

6.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Steven Blount whose telephone number is 571 - 272 -

3071. The examiner can normally be reached on M-F 9:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Mr. Chau Nguyen, can be reached on 571 – 272 - 3126. The fax phone

number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ajit Patel
Primary Examiner

SB
6/9/05